

REMARKS

The claims have been amended to clarify that the subject matter of the invention is a composition of matter. This is a statutory category specifically set forth in 35 U.S.C. § 101. Claims 19-21 have been further amended for additional clarity. No new matter is added and entry of the amendment is respectfully requested.

Applicants appreciate the recognition that the relevant organism ATCC PTA 2500 is available to the public. Applicants have no contrary information.

The Rejection Under 35 U.S.C. § 101.

The claims were rejected as assertedly nonstatutory. It is believed that the amendment to the claims clarifies that the subject matter is explicitly contemplated by the statute. Applicants are not aware of any authority which states that claimed compositions of matter need to be detachable from the earth. The office has cited no authority for its position with regard to the claims prior to the amendment. Accordingly, Applicants believe the rejection may be withdrawn as to the claims as amended.

The Rejection Under 35 U.S.C. § 112, paragraph two.

Claims 17-25 were rejected as indefinite because the “physical metes and bounds of the claimed subject matter are not clear.” Applicants respectfully disagree. The metes and bounds of the composition of matter extend to the limits of the presence of the biofilm described in claim 17. If the biofilm is present, the composition is included within the scope of the invention. Thus, the claims are not indefinite and this basis for rejection may be withdrawn.

The Office disputes the term “geotextile” as it interprets a “permeable stratum” to be a rock formation. Respectfully, this interpretation of permeable stratum is inaccurate; a permeable stratum

is a portion of the earth which contains spaces to be filled with the biofilm of the invention.

Nevertheless, claim 21 has been clarified to state that the plugged stratum includes a geotextile.

Double Patenting.

Although it is believed that claims 17-25 are directed to non-elected subject matter with respect to a restriction requirement in the parent, a terminal disclaimer is enclosed herewith.

Conclusion

In view of the amendment to the claims and the discussion above, it is respectfully submitted that all pending claims, claims 17-25, are in a position for allowance and passage of these claims to issue is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket No. 524412000710.

Respectfully submitted,

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